

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS
SUCCESSOR IN INTEREST TO JP
MORGAN CHASE BANK, N.A., AS
TRUSTEE FOR STRUCTURED ASSET
MORTGAGE INVESTMENTS II TRUST
2006-AR6, MORTGAGE PASS-
THROUGH CERTIFICATES SERIES
2006-AR6.

Plaintiff,

V.

TRAMONTO VILLAGGIO
HOMEOWNERS ASSOCIATION;
DAISY TRUST; and ALESSI & KOENIG,
LLC.

Defendants.

Case No.: 2:16-cv-01897-KJD-GWF

ORDER

Presently before the Court for consideration is Defendant Daisy Trust’s (“Daisy”) Motion to Dismiss (#14). Plaintiff The Bank f New York Mellon f/k/a The Bank of New York Mellon as Successor in Interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Trust 2006-AR6, Mortgage Pass-Through Certificates, Series 2006-AR6 (“BoNY”) filed a response in opposition (#16) to which Daisy replied (#17).

1 **I. Facts**

2 The present action involves a dispute over real property located at 9576 Trattoria Street, Las
3 Vegas, Nevada 89178 (“the Property”). Vahag Stepanyan (“Stepanyan”) purchased the Property on
4 or about October 26, 2005. Stepanyan financed the purchase with a \$4629,250.00 loan, secured by a
5 deed of trust dated June 21, 2006. The deed of trust was assigned to BoNY on March 8, 2010 via an
6 assignment of deed of trust recorded with the Clark County Recorder.

7 On November 16, 2010 Tramonto Villaggio Homeowners Association (“Tramonto”), through
8 its agent Alessi & Koenig, LLC (“Alessi”), recorded a notice of delinquent assessment lien for
9 \$664.22. On February 16, 2011, Tramonto, through its agent Alessi, recorded a notice of default and
10 election to sell for the amount of \$1,871.76 as of January 11, 2011.

11 On or about January 18, 2011 BAC Home Loans Servicing, LP (“BAC”), predecessor-in-
12 interest to BoNY, requested a ledger from Tramonto, through its agent Alessi, identifying the super-
13 priority amount owed to Tramonto. Tramonto provided a ledger identifying the total amount
14 allegedly owed, dated January 10, 2011. BAC calculated an amount of nine months assessment and
15 tendered \$432.00 to Tramonto, via Alessi, on February 11, 2011.

16 On August 11, 2011, Alessi recorded a notice of trustee’s sale against the property on behalf
17 of Tramonto. The notice stated the amount due was \$3,370.03 including reasonably estimated costs,
18 expenses, and advances. Tramonto, via Alessi, recorded a second notice of trustee’s sale on August
19 21, 2012. The notice states the amount due was \$3,645.03, including reasonably estimated costs,
20 expenses, and advances. On September 25, 2012 a foreclosure deed in favor of Daisy¹ was recorded
21 reflecting that Tramonto had sold the property for \$9,000.

22 BoNY filed its complaint against Tramonto, Alessi, and Daisy on August 10, 2016. In the
23 complaint BoNY asserted claims of (1) quiet title, (2) breach of NRS 116.1113, (3) wrongful
24 foreclosure, and (4) injunctive relief.

25
26 ¹The Court will presume Defendant meant Daisy Trust instead of the unnamed party Saticoy
 Bay in its motion to dismiss (#14 pg. 2).

1 **II. Legal Standard**

2 **A. Motion to Dismiss**

3 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can
4 be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and plain
5 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Bell
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
7 factual allegations, it demands more than "labels and conclusions or a formulaic recitation of the
8 elements of a cause of action." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations omitted).
9 "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly,
10 550 U.S. at 555. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual
11 matter to 'state a claim for relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (citation
12 omitted).

13 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
14 considering motions to dismiss. First, a district court must accept as true all well-pled factual
15 allegations in the complaint; however, legal conclusions or mere recitals of the elements of a cause of
16 action, supported only by conclusory statements, are not entitled to the assumption of truth. Id. at
17 678. Second, a district court must consider whether the factual allegations in the complaint allege a
18 plausible claim for relief. Id. at 679. A claim is facially plausible when the plaintiff's complaint
19 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
20 alleged misconduct. Id. at 678.

21 Further, where the complaint does not permit the court to infer more than the mere possibility
22 of misconduct, the complaint has "alleged—but it has not show[n]—that the pleader is entitled to
23 relief." Id. at 679 (internal quotation marks omitted). Thus, when the claims in a complaint have not
24 crossed the line from conceivable to plausible, the complaint must be dismissed. Twombly, 550 U.S.
25 at 570. Moreover, "[a]ll allegations of material fact in the complaint are taken as true and construed
26

1 in the light most favorable to the non-moving party.” In re StacElecs. Sec. Litig., 89 F.3d 1399, 1403
2 (9th Circ. 1996) (citation omitted).

3 **III. Analysis**

4 **A. Quiet Title**

5 Under Nevada law, “[a]n action may be brought by any person against another who claims an
6 estate or interest in real property, adverse to the person bringing the action for the purpose of
7 determining such adverse claim.” Nev. Rev. Stat. § 40.010. “A plea to quiet title does not require any
8 particular elements, but each party must plead and prove his or her own claim to the property in
9 question and a plaintiff’s right to relief therefore depends on superiority of title.” Chapman v.
10 Deutsche Bank Nat'l Trust Co., 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
11 marks omitted). Therefore, for the plaintiff to succeed on its quiet title action, it needs to show that
12 its claim to the property is superior to all others. See also Brelian v. Preferred Equities Corp., 918
13 P.2d 314, 318 (Nev. 1996) (“In a quiet title action, the burden of proof rests with the plaintiff to
14 prove good title in himself.”).

15 Here, Plaintiff alleges that the foreclosure by Tramonto, via Alessi, is void and therefore did
16 not extinguish BoNY’s senior deed of trust. In the alternative, Plaintiff seeks this court to declare that
17 title is subject to the senior deed of trust. Accepting the facts of the complaint as true, BoNY made an
18 offer to tender the super-priority amount of the lien. BoNY claims its due process protections were
19 violated when it was not provided notice that the tender did not redeem the deed of trust. BoNY
20 further argues that because the foreclosure bid was commercially unreasonable the sale of the
21 property did not extinguish the senior deed of trust, or voided the foreclosure sale. Finally, BoNY
22 claims that because the super-priority amount of the lien had been paid, Daisy should have known of
23 the senior deed of trust and is therefore not a bona fide purchaser.

24 Taking the well plead facts of the complaint as true and plausible, the Court could finds that
25 Plaintiff has stated a claim upon which relief could be granted. Accordingly, the Court denies
26 Defendant’s motion to dismiss.

III. Conclusion

Accordingly, **IT IS HEREBY ORDERED** that Defendant Daisy Trust's Motion to Dismiss (#14) is **DENIED**.

DATED this 15 day of September 2017.



Kent J. Dawson
United States District Judge